

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: William Baxendale et al.
Serial No: 10/527,767
Filing Date: September 12, 2005
Title: Chicken Astrovirus Type 2
Confirmation No: 5168
Group Art Unit: 1648
Examiner: Ali Reza Salimi
Attorney Ref: 2002.016 US

February 23, 2010

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT

Mail Stop: PETITIONS
Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313

Sir/Madam:

Applicants request reconsideration of the patent term adjustment indicated in the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) that accompanied the Notice of Allowance dated January 21, 2010. Applicants have determined that the patent term adjustment should be 565 days, rather than the 0 days indicated.

The Commissioner is hereby authorized to debit the fee under 37 C.F.R. 1.18(e) to Deposit Account number 19-0365.

Applicants' determination is detailed in Appendix A, the AIPA Term Calculation Report, submitted herewith. The credits and debits with respect to the patent term adjustment are summarized as follows:

USSN: 10/527,767
Attorney Docket: 2002.016 US
Request for reconsideration of Patent Term Adjustment

Respectfully submitted,
/William M. BLACKSTONE, Registration No. 29,772/
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Intervet/Schering-Plough Animal Health
Patent Dept. K-6-1, 1990
Kenilworth, NJ 07033

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APPENDIX “A”

AIPA Term Calculation Report

| APPLICATION INFORMATION | | | |
|-------------------------|---|------------------------|---------------------------|
| Docket Number: | I-2002.016 US | User Name: | Blackstone, William |
| Application Number: | 10/527,767 | Firm/Company Name: | Schering-Plough |
| Filing Date: | 09/15/2003 | User Comments: | |
| Title/Inventor(s): | CHICKEN ASTROVIRUS TYPE 2; William Baxendale, Cambridge, GBN (GB) | Calculation Generated: | 02/16/2010 04:22:26 PM ET |

| AIPA TERM CALCULATION SUMMARY | |
|---|--------------------|
| Calculation Mode: | Preliminary (1) |
| Earliest Referenced Application under 35 USC § 120, 121, or 365(c): | 09 / 15 / 2003 |
| International Filing Date: | 09 / 15 / 2003 |
| Net Adjustment Credits: | 690 Days |
| Net Adjustment Debts: | 125 Days |
| Patent Term Adjustment: | 565 Days |
| AIPA Patent Term End Date: | 04 / 02 / 2025 (2) |

(1) Based on your current data for this application, a complete calculation could not be performed. Some rule(s) in your application could not be analyzed because they are associated with improper events or missing related events, or an election was made not to analyze the rule. For a list of event and rule issues, see the Term Analysis tab.
(2) Assumes payment of all maintenance fees, no intervening acts, and no 35 USC 156 regulatory extensions. Terminal disclaimer(s) filed in this case, if any, may result in an earlier term end date. Without adjustment, the term would end on 09/15/2023.

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| Credit Days (USPTO Delay): | - | 690 | x |
| Debit Days (Applicant Delay): | - | 125 | x |
| Total Patent Term Adjustment Days: | 0 | 565 | x |

(3) Comparison is shown for USPTO Delay, Applicant Delay, and Total Patent Term Adjustment fields displayed on USPTO PAIR Patent Term Adjustments (PTA) tab on 02/16/2010. See the full PAIR PTA tab, file wrapper (e.g., Notice of Allowance, PTA-related petitions), and issued patent for complete information on USPTO-calculated PTA.

| PTA Calculation Summary (1) | | | |
|---|--|---|------------------|
| Applicant | Applicant Delay | USPTO Delay | PTA Result |
| 08/22/2005 Notice of DO/EO Missing Requirements | <p>3-Month Applicant Response to Notice or Action</p> <p>Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154(b)(2)(C)(ii); 37 CFR 1.704(b).</p> <p>Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c).</p> | Applicant Response: None Assigned | Not Analyzed (1) |
| 09/12/2005 National Stage Commenced under 35 USC 371(b) or (f) | <p>3-Year PTO Issue of Patent</p> <p>PTO must issue a patent within 3 years (not including exclusions) after the date on which the application was filed under 35 USC 111(a) or the national stage commenced under 35 USC 371(b) or (f) in an international application. Period of adjustment (credits) begins on the day after the date that is 3 years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 USC 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the listed exclusionary periods. 35 USC 154(b)(1)(B); 37 CFR 1.702(b), 1.703(b).</p> <p>You have elected to analyze this rule in accordance with <i>Wyeth v. Kappos</i>, ___ F.3d ___ (Fed. Cir. 2010).</p> | Issue Date: 08/03/2010 Issue Date | 690 |

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| <p>09/12/2005 Application Fulfilled Requirements of 35 USC 371</p> | <p align="center">14-Month PTO First Action</p> <p>PTO must mail a notification under 35 USC 132 or a notice of allowance under 35 USC 151 not later than 14 months after the date on which the application was filed under 35 USC 111(a) or fulfilled the requirements of 35 USC 371 in an international application. Period of adjustment (credits) begins on the day after the date that is 14 months after the date on which the application was filed under 35 USC 111(a) or fulfilled the requirements of 35 USC 371 and ending on the date of mailing of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(i); 37 CFR 1.702(a)(1), 1.703(a)(1).</p> | <p align="center"><i>First PTO Action:</i></p> <p align="center">08/08/2006 Non-final Action</p> | | <p align="center">0</p> |
| <p>08/08/2006 Non-final Action</p> | <p align="center">3-Month Applicant Response to Notice or Action</p> <p>Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(ii); 37 CFR 1.704(b).</p> <p>Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(e).</p> <p>You have indicated that no 1.705(e) Showing of Due Care was made.</p> | <p align="center"><i>Applicant Response:</i></p> <p align="center">11/16/2006 Reply after Non-final Action under 37 CFR 1.111</p> | <p align="center">8</p> | |
| <p>11/16/2006 Reply after Non-final Action under 37 CFR 1.111</p> | <p align="center">4-Month PTO Response to Applicant Reply</p> <p>PTO must respond to a reply under 35 USC 132 not later than 4 months after the date on which the reply was filed. The period of adjustment (credits) begins on the day after the date that is 4 months after the date a reply under 37 CFR 1.111 or in compliance with 37 CFR 1.113(c) was filed and ending on the mailing date of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(ii); 37 CFR 1.702(a)(2), 1.703(a)(2),(3).</p> | <p align="center"><i>PTO Response:</i></p> <p align="center">03/01/2007 Non-final Action</p> | | <p align="center">0</p> |
| <p>03/01/2007 Non-final Action</p> | <p align="center">3-Month Applicant Response to Notice or Action</p> <p>Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(ii); 37 CFR 1.704(b).</p> <p>Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(e).</p> <p>You have indicated that no 1.705(e) Showing of Due Care was made.</p> | <p align="center"><i>Applicant Response:</i></p> <p align="center">06/01/2007 Reply after Non-final Action under 37 CFR 1.111</p> | <p align="center">0</p> | |

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| <p>06/01/2007 Reply after Non-final Action under 37 CFR 1.111</p> | <p>PTO must respond to a reply under 35 USC 132 not later than 4 months after the date on which the reply was filed. The period of adjustment (credits) begins on the day after the date that is 4 months after the date a reply under 37 CFR 1.111 or in compliance with 37 CFR 1.113(c) was filed and ending on the mailing date of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(ii); 37 CFR 1.702(a)(2), 1.703(a)(2),(3).</p> | <p>PTO Response: 08/14/2007 Non-final Action</p> | | 0 | |
| <p>08/14/2007 Non-final Action</p> | <p>Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(ii); 37 CFR 1.704(b).</p> <p>Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c).</p> <p>You have indicated that no 1.705(c) Showing of Due Care was made.</p> | <p>Applicant Response: 10/04/2007 Reply after Non-final Action under 37 CFR 1.111</p> | 0 | | |
| <p>10/04/2007 Reply after Non-final Action under 37 CFR 1.111</p> | <p>PTO must respond to a reply under 35 USC 132 not later than 4 months after the date on which the reply was filed. The period of adjustment (credits) begins on the day after the date that is 4 months after the date a reply under 37 CFR 1.111 or in compliance with 37 CFR 1.113(c) was filed and ending on the mailing date of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(ii); 37 CFR 1.702(a)(2), 1.703(a)(2),(3).</p> | <p>PTO Response: 12/26/2007 Non-final Action</p> | | 0 | |
| <p>12/26/2007 Non-final Action</p> | <p>Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(i); 37 CFR 1.704(b).</p> <p>Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c).</p> <p>You have indicated that no 1.705(c) Showing of Due Care was made.</p> | <p>Applicant Response: 04/21/2008 Reply after Non-final Action under 37 CFR 1.111</p> | 26 | | |

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| 04/21/2008 Reply after Non-final Action under 37 CFR 1.111 | 4-Month PTO Response to Applicant Reply PTO must respond to a reply under 35 USC 132 not later than 4 months after the date on which the reply was filed. The period of adjustment (credits) begins on the day after the date that is 4 months after the date a reply under 37 CFR 1.111 or in compliance with 37 CFR 1.113(c) was filed and ending on the mailing date of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(ii); 37 CFR 1.702(a)(2), 1.703(a)(2),(3). | PTO Response: 08/06/2008 Final Rejection | | | 0 |
| 08/06/2008 Final Rejection | 3-Month Applicant Response to Notice or Action Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(ii); 37 CFR 1.704(b). Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c). You have indicated that no 1.705(c) Showing of Due Care was made. | Applicant Response: 02/05/2009 Notice of Appeal to Board of Patent Appeal and Interferences | 91 | | |
| 02/05/2009 Notice of Appeal to Board of Patent Appeal and Interferences | Exclusion for Appellate Review 3-Year PTO Issue Requirement does not include the period of appellate review by the BPAI or a Federal court, beginning on the date on which a notice of appeal to the BPAI was filed under 35 USC 134 and 37 CFR 41.31 and ending on the date of the last decision by the BPAI or by a Federal court in an appeal under 35 USC 141 or a civil action under 35 USC 145, or on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first, if the appeal did not result in a decision by the BPAI. 35 USC 154(b)(1)(B)(ii); 37 CFR 1.702(b)(4), 1.703(b)(4). | Responsive Event: None Assigned | Not Analyzed (1) | | |
| 02/05/2009 Notice of Appeal to Board of Patent Appeal and Interferences | Credit for Successful Appellate Review Term of an original patent shall be adjusted (credits) for the period beginning on the date on which a notice of appeal to the BPAI was filed under 35 USC 134 and 37 CFR 41.31 and ending on the date of a final decision in favor of the applicant by the BPAI or by a Federal court in an appeal under 35 USC 141 or a civil action under 35 USC 145. 35 USC 154(b)(1)(C)(iii); 37 CFR 1.702(e), 1.703(e). | Final Appellate Decision: None Assigned | Not Analyzed (1) | | |

| 4-Month PTO Response to Appeal Brief | | | | |
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| 04/29/2009 Appeal Brief by Applicant | PTO must respond to an appeal taken under 35 USC 134 not later than 4 months after the date on which the appeal was taken. The period of adjustment (credits) begins on the day after the date that is 4 months after the date an appeal brief in compliance with 37 CFR 41.37 was filed and ending on the date of mailing of any of an examiner's answer under 37 CFR 41.39, an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(ii); 37 CFR 1.702(a)(2), 1.703(a)(4). | PTO Response to Appeal Brief: 09/17/2009 Examiner's Answer to Appeal Brief | | 19 |
| 01/21/2010 Notice of Allowance under 35 USC 151 | 3-Month Applicant Response to Notice or Action Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(ii); 37 CFR 1.704(b). Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c). You have indicated that no 1.705(c) Showing of Due Care was made. | Applicant Response: 04/21/2010 Issue Fee Payment under 35 USC 151 | 0 | |
| 04/21/2010 Issue Fee Payment under 35 USC 151 | 4-Month PTO Issue of Patent PTO must issue a patent not later than 4 months after the date on which the issue fee was paid under 35 USC 151 and all outstanding requirements were satisfied. The period of adjustment (credits) begins on the day after the date that is 4 months after the date the issue fee was paid and all outstanding requirements were satisfied and ends on the day the patent issues. 35 USC 154(b)(1)(A)(iv); 37 CFR 1.702(a)(4), 1.703(a)(6). | Issue Date: 08/03/2010 Issue Date | | 0 |
| Total Exclusion, Debit, and Credit Days: | | | 0 | 125 |
| Overlap Days (8) : | | | 0 | 0 |
| Net Exclusion, Debit, and Credit Days: | | | 0 | 125 |
| Patent Term Adjustment Days (9) : | | | | 565 |